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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 1113

COUNTY OF MARIN, STATE OF CALIFORNIA,
Petitioner,

vs.

JAMES S. PEDROTTI, also known as Stephen Pedrotti, MARLYN PEDROTTI, MRS. ANGIE MINER, now known as Angie Boltz, MRS. RUBY BRIEN, MRS. KATHERINE COBB, SAM PEDROTTI, MRS. EUNICE BAUCHERO, MRS. JULIA ESTELLE BEAUREGARD, MRS. MAE GHISLETTO, RALPH PEDROTTI, MRS. BEATRICE M. CAPUCETTI, MRS. ERNESTINE B. PRONINI, GUSSIE K. PEDROTTI, now known as Gussie K. Graham, MRS. SANTINA CERINI, MRS. SAVINA CERINI, MRS. EVA PEDROTTI and MARTIN PEDROTTI,
Respondents.

Upon Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

(NOTE): Italics throughout is that of respondents.

OPINION BELOW.

The opinion of the District Court of the United States for the Northern District of California, is reported in 54 F. Supp. 692.

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit is reported in 152 F. (2d) 829.

STATEMENT OF THE CASE.

On November 9, 1933, Matthias Joseph Pedrotti died, leaving a will which contained the following provision:

> "8. I give, devise and bequeath my home ranch at Ignacio, Marin County, California, commonly known as the Pedrotti Ranch, containing 263 acres of land more or less, to the County of Marin. Said ranch shall be kept by said County of Marin, and the net income derived therefrom shall be used by said County of Marin for the aid and relief of crippled and blind bona fide residents of the County of Marin, who are in need. Said County of Marin shall at no time sell or mortgage said property, or attempt to sell or mortgage the same, and in the event that said County of Marin should sell or mortgage the said property, or attempt to sell or mortgage said property, then it shall forfeit all rights to said property, and said property shall forthwith revert to, and become the property of my heirs at law according to the laws of succession of the State of California.
>
> "This gift to said County of Marin is given in memory of my deceased wife, Henrietta G. Ped-

rotti, and said ranch shall upon its distribution to said County of Marin, be known as, and called the 'Henrietta G. Pedrotti Memorial Farm.' "
(R. 100.)

The last will and testament of the above-named deceased was duly and regularly admitted to probate by the Superior Court of the State of California, in and for the County of Marin, and thereafter, and on or about the 28th day of December, 1934, said Superior Court by its order duly given and made, distributed said real property to the County of Marin in trust, according to the terms and provisions of the last will and testament of said decedent. (R. 90-95.)

Pursuant to said order of distribution the County of Marin took possession of said Pedrotti Ranch, containing 263 acres of land more or less, and held the same until the conveyance thereof to the United States of America under condemnation proceedings. (R. 66.)

The compensation paid into the registry of the Court below for said property so sold was $43,550.00, which all parties to the condemnation proceedings stipulated was full, adequate and just compensation therefor. (R. 38.)

The defendants in the condemnation proceedings were the County of Marin and the heirs of the decedent Pedrotti.

The defendants in the condemnation proceedings further stipulated to the payment of $2027.00 to one M. S. Amaral for his leasehold interest in the prop-

erty. (R. 43.) The question before the District Court and before the Circuit Court of Appeals was whether the remaining $41,523.00 should be paid to the County of Marin or to the heirs of the decedent Pedrotti.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals for the Ninth Circuit (R. 293) was entered on January 10, 1946. The petition for rehearing was denied on February 26, 1946. The mandate of the Circuit Court of Appeals was stayed until after this Court passes on the petition and disposes of the cause. The jurisdiction of this Court is sought to be invoked under Act of February 13, 1925, Ch. 229, Sec. 1, 43 Stat. 938, as amended, Judicial Code, Sec. 240(a), Title 28 U.S.C.A. Sec. 347(a).

Jurisdiction was conferred on the District Court by Section 41(1) of Title 28 U.S.C.A. and Sections 257, 258 and 258a of Title 40 U.S.C.A.

Judgment was entered in the District Court on May 29, 1944. (R. 62.) Within three months, and on August 4, 1944, notice of appeal was filed (R. 69), pursuant to Sections 225(a) and 230 of Title 28 U.S.C.A. and Rule 73 of the Federal Rules of Civil Procedure.

SUMMARY OF ARGUMENT.

The decedent Pedrotti by his last will and testament created not an estate in fee simple defeasible in the petitioner but a testamentary trust which has terminated by its terms and under the law of California.

ARGUMENT.

The title acquired by the County of Marin under the last will and testament of the decedent was not an estate in fee simple defeasible.

The decedent by his last will and testament created a testamentary trust which has terminated. Having terminated, the proceeds of the condemnation award should be paid to and "shall vest in the persons entitled thereto". (Sec. 258a of Title 40 U.S.C.A.)

At the trial of this case petitioner had difficulty in settling down to a definite position in respect to the legal questions involved in the case. It tendered to the Court the thought that the case should be resolved on the theory that the title of the County of Marin was an estate in fee simple defeasible. It abandoned this position, and thereafter faced the issues involved as they really exist.

The position of respondents had been clearly defined and has never been deviated from in any stage of the case.

This case was decided by the District Court on the basis that a trust was created and impliedly the theory

of "a possessory estate in fee simple defeasible" was rejected by the trial Court.

The trial judge in his memorandum opinion (R. 48) said:

> "The only question before the Court is the effect upon such *trust* of the condemnation proceedings."

In the findings of the trial Court (No. XII, R. 59) the Court found:

> "That the charitable purpose of said devise has not been defeated or become impossible of fulfillment by the condemnation of said property by the United States and that said purpose can still be carried out."

In the conclusions of law (R. 60, 61) the trial Court declared:

"I.

"That the will of Matthias Joseph Pedrotti created a valid charitable *trust* of the ranch therein devised for the aid and relief of the needy crippled and needy blind bona fide residents of the County of Marin.

"II.

"That said *trust* was not one of limited duration.

"III.

"That said *trust* has not terminated.

"IV.

"That the condemnation of said property by the United States of America did not cause a rever-

sion thereof to the heirs of the said Matthias Joseph Pedrotti, deceased.

"V.

"That the possibility of reverter in the heirs of said Matthias Joseph Pedrotti, deceased, has no compensable value in this condemnation proceedings.

"IV.

"That the entire compensation for the condemnation of said property in this proceeding (except that portion thereof which by stipulation was paid to M. S. Amaral for the value of his lease-hold interest) should be paid to the County of Marin *as trustee in trust* for the aid and relief of the needy crippled and needy blind bona fide residents of the County of Marin, and as a *substitute trust res* in substitution of the land condemned."

The possibility of reverter which the trial Court had in mind in its conclusion V above referred to was a future possibility of reverter in the proceeds of the sale which were awarded to the County of Marin, subject to the trust created by an application of the cy-pres doctrine (not the trust created by the will of the deceased). It was a conclusion predicated upon its previous finding and conclusion that the trust created in the will and the decree of distribution had not terminated and was consistent therewith.

The question of the division of the proceeds from a condemnation proceeding between the owner of a fee simple estate defeasible and the owner of an estate

in reversion, which is the subject matter of the determination in the authorities cited by petitioner is *not* the question involved in this case. This is obviously true. If the case was to be determined upon the theory now advanced by petitioner, the entire proceeds of the sale would go to the County of Marin, free from trust, free from obligation and free from the application of the cy-pres doctrine. It would mean, further, that if this will had specifically provided "that in the event of condemnation of the land, the County of Marin shall forfeit all right to the property and the same should forthwith revert to my heirs", the County of Marin could still take the position that this was an estate in fee simple defeasible and the estate "possibility of reverter" was not compensable.

The will of Pedrotti and the decree of distribution in his estate clearly create a trust.

The deceased by his last will and testament created a voluntary trust in real property. The failure of the deceased to use the words "trust", "in trust" or "trustee" is immaterial.

Estate of Ingram, 104 Cal. App. 1, 6, 285 P. 365;

Estate of Shaw, 198 Cal. 352, 359, 246 P. 48;

Kornbau v. Evans, 66 Cal. App. (2d) 677, 684, 152 P. (2d) 651.

All the elements of the trust prescribed by Sections 852, 863, 864, 2221 and 2222 of the Civil Code of California (see Appendix) and enumerated in the case of

Dingwell v. Seymour, 91 Cal. App. 483, 508, 267 P. 327, are present.

A trust having been created, in determining whether or not it has terminated, we look to its terms and to the basic law of California, which is set forth in the following sections of the Civil Code:

Section 864 provides as follows:

> "Author of trust may devise, etc. Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust."

(It will be noted that this section codifying the law of trusts in relation to real property is in conflict with petitioner's theory of "possessory estate in fee simple defeasible".)

Section 871 provides as follows:

> "When estate of trustee to cease. When the purpose for which an express trust was created ceases, the estate of the trustee also ceases."

Section 2279 provides as follows:

> "Trust, how extinguished. A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful."

Thus it is the position of respondents:

(a) That all that the decedent Pedrotti created by his last will and testament was a testamentary trust

and not an estate in fee simple defeasible in the petitioner;

(b) That the primary purpose of the trust was the preservation of the home ranch as a perpetual memorial to the deceased wife of the testator;

(c) That the trust terminated for the reasons set forth in the opinion of the Circuit Court of Appeals (not only because the testator intended that a sale or conveyance resulting from condemnation should terminate the trust but also because "a trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful");

(d) That the trust having terminated the doctrine of cy-pres has no application; and

(e) That the condemnation award which has now become the corpus of the trust which has terminated should be paid to the "persons entitled thereto", the heirs of Pedrotti, the persons specifically named in his will as those to whom the trust estate should revert or pass.

CONCLUSION.

Contra to the conclusion expressed by petitioner, the respondents respectfully submit that petitioner never had an estate in fee simple defeasible, entitling it to the full award free from trust or the application of the cy-pres doctrine, but in fact merely held the property in trust; that the trust terminated, according to its terms and under the law of California, upon the

sale or conveyance of the trust res in the eminent domain proceedings; and that the substituted trust res (the award) should be paid to respondents.

For the reasons hereinabove stated it is contended by respondents that the petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit should be denied.

Dated, San Francisco, California,
May 15, 1946.

Respectfully submitted,
GREGORY, HUNT, MELVIN & FAULKNER,
HAROLD C. FAULKNER,
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(Appendix Follows.)